IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1719 of 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Shri M.G. Bhangde, Senior Advocate for Petitioner.

Coram : A.H. Joshi & R.C. Chavan, JJ.
Dated : 16th April, 2007

1. The petitioner was allotted contract of construction and improvement of road (O to 40 Kms. on Jam-Chandrapur Road) on BOT basis.

2. According to the petitioner, certain problems were visualized due to damage to the road in the intervening period relating to camber, super elevation and surface profile, etc., and this was inter alia the reason of delay in the completion.

3. According to the respondents, the work could not be completed in time and the proposal for variation was submitted by the petitioner has been returned with communication dated 22-2-2007 being submitted beyond the period stipulated for completion of work.

4. According to the learned Senior Advocate for the petitioner, the action of the Government calls for intervention in the premises, viz.:

(i) that the contract of the petitioner has not been terminated;

(ii) that the period of contract spills over 11 years and two months;

(iii) that it is at the initiation of the respondent-State the improvement proposal was required to be given, which had sheerly caused delay in allotment of the contract;

(iv) that this will result in losses to the Government if fresh tender is allotted; and

(v) that serious public interest is involved, which may get prejudiced, if no interference is done.

5. We have considered the contents of the petition as well as the annexures to it. It is a case where there have been allegations against the contractor of failing to cope up with the speed and volume of work in required time. We find that suggestion for additional work/item in particular about the surface profile and camber, etc., is not a matter, which would have been in any manner intervened the speed of work. Moreover, the Government seems to have considered these items on being represented by the petitioner.

6. Moreover, when the contract of such nature, though is done on the basis of investment by the private entrepreneur in delay, is not a just matter of loss to the entrepreneur, and is a matter of loss to the system, since the road, which is the life-line of the development, get hampered and it adversely affects the development of region concerned.

7. It is not a case of the petitioner that he is remedy-less.

8. In this background of the disputed question of fact, we do not propose to interfere in the petition.

9. The petition is, therefore, dismissed. We observe that the dismissal of the petition being done on account of the disputed questions of fact, this does not in any manner adversely affect the petitioner's remedy as may be available to the petitioner in law.

Judge Judge

pdl.